



COMMITTEE of the WHOLE

CITY COUNCIL

MINUTES
March 28, 2011
4:30 P.M.

COUNCIL MEMBERS PRESENT:

D. Reed, S. Marmarou, M. Goodman-Hinnershitz, V. Spencer, D. Sterner

OTHERS PRESENT:

L. Kelleher, S. Katzenmoyer, F. Denbowski, C. Geffken, C. Younger, E. Lloyd, O. Smith, D. Kersley

Mr. Spencer called the Committee of the Whole meeting to order at 4:40 p.m.

I. Memorandum of Understanding - PermaCultivate

Ms. Goodman-Hinnershitz explained that this MOU has been reviewed by the Public Works Committee. She stated that she wanted to body to review the MOU before it was signed by the Mayor.

Mr. Spencer questioned if this was initiated by the City. Mr. Denbowski stated that it is a joint effort.

Mr. Lloyd reviewed the MOU. He stated that this group has been in discussion with the City since November 2010. He stated that this MOU is modeled after the former agreement with the "Friends of the Greenhouse." He noted his vision that the greenhouse would become a community center and would add to student curriculum. He noted that the RSD is open to providing opportunities at the greenhouse for truant and probation students. He also noted his vision that the group could expand beyond the greenhouse into the rose garden area to provide attractive, low maintenance plantings. He stated that this MOU is within the master plan for City Park.

Mr. Spencer clarified that in the MOU the City is party A and PermaCultivate is party B.

Mr. Denbowski explained that the MOU would be in place until a more formal lease agreement is signed. He stated that this will be a test period for the program and that Council approval will be needed for the lease agreement.

Mr. Waltman arrived at this time.

Mr. Marmarou questioned the existence of the "Friends of the Greenhouse." Ms. Goodman-Hinnershitz stated that the group disbanded and that Berks Urban Greening (BUG) has been using the greenhouse informally. She expressed her belief that the MOU (as a test) is a good approach.

Ms. Reed questioned if PermaCultivate received any of the remaining funds from "Friends of the Greenhouse." Mr. Lloyd stated that they did not.

Ms. Reed offered to contact a former member of the "Friends of the Greenhouse" to discuss turning any remaining funds over to PermCultivate.

Ms. Goodman-Hinnershitz stated that a rose garden is difficult to maintain. She noted the need for other, more practical, plants which will require less maintenance.

Mr. Lloyd noted that he has worked closely with Mr. Zeiber through this process. He stated that this group plans to create no additional burden for the City.

Mr. Spencer noted that the MOU requires the monthly utility statements to be analyzed. He questioned if that was to allow PermaCultivate to make payments in the future. Mr. Lloyd replied that it was.

Mr. Marmarou suggested that the use of the former bomb shelter also be investigated.

Ms. Goodman-Hinnershitz questioned if PermaCultivate would be participating in the Penn Street market this season. Mr. Lloyd stated that they will.

Mr. Spencer questioned the next steps. Ms. Goodman-Hinnershitz stated that this MOU will be used as a model for other future partnerships. She stated that old agreements lack consistency. She noted the need for groups to be processed similarly.

Mr. Spencer questioned when the MOU would be signed and when the group would be ready to commence. Mr. Lloyd stated that the Mayor is ready to sign the MOU and the group is ready to begin their work. He stated that they have retained a consultant and are working with the Citadel to begin programming.

Mr. Spencer questioned who would supervise the students. Mr. Lloyd stated that the District would be supervising. He stated that he would also be reaching out to after school eco-clubs.

Ms. Goodman-Hinnershitz also noted the need to speak with the Citadel administration about teens skateboarding in City Park and gaining access to the bandshell. Mr. Lloyd stated that many rocks are also thrown through the greenhouse windows.

Mr. Spencer questioned if the Mayor was ready to sign the MOU. Mr. Denbowski indicated that he was.

Mr. Lloyd stated that City officials would be invited to a future grand opening event.

II. Sewer Fund Investigation

Mr. Spencer stated that action is required to initiate the investigation. Mr. Geffken stated that he has spoken with Mr. Acosta as the chair of the Finance Committee. He questioned how the issue would move forward.

Mr. Spencer stated that the ordinance contains specific questions which need to be answered. He questioned if Mr. Geffken's written response to those questions would satisfy the requirements. Mr. Geffken stated that he would be happy to attach his confidential memo. He noted the need to review the memo with the solicitor to determine if this would constitute an official response.

Mr. Spencer questioned if the solicitor considered that to be a satisfactory response. Mr. Younger noted his concern with some wording of the ordinance but suggested that the proposed action may satisfy the intent of the ordinance.

Mr. Spencer questioned the need to amend or repeal and re-create the ordinance to quell the solicitor's concerns about the wording. Mr. Younger stated that the ordinance can be amended. He stated that the ordinance does not contain a time limitation. Mr. Spencer noted the need to conclude the issue as soon as possible.

Mr. Younger stated that the ordinance calls for an independent investigation. He stated that he will work with Council staff to finalize the amendment.

Ms. Goodman-Hinnershitz expressed her belief that the resulting information needs to be filed with the ordinance when the issue is resolved. Mr. Geffken again stated his willingness to provide the necessary information.

Ms. Goodman-Hinnershitz noted the need to document who knew what and when. She noted that it will be easier to get the information from current employees but it may be more difficult to reach those who are no longer employed by the City.

Mr. Spencer questioned what could be done to those unwilling to disclose this information. Ms. Reed stated that Council has subpoena powers.

Mr. Spencer questioned the process to issue subpoenas. Mr. Younger stated that they would be executed by the Council President.

Mr. Spencer questioned who would handle taking the depositions. Ms. Kelleher stated that the subject would be questioned by legal staff under oath.

Mr. Spencer questioned if a hearing was necessary. Mr. Younger stated that this would be a decision for Council to make. He stated that the subpoena could request documents and/or testimony.

Ms. Goodman-Hinnershitz suggested that the solicitor describe options for Council to review and decide a best course. Ms. Reed suggested that each option also contain the steps to be followed.

Mr. Spencer noted that people may attend but refuse to answer. He noted the need to consider a course of action in this instance as well. He stated that the Administration should work with Council staff on this issue.

Mr. Sterner stated that he was not present at the meeting where a vote was taken on this issue. He noted his understanding that it should be simple to document what happened and why.

Mr. Acosta arrived at this time.

Mr. Sterner stated that transfers are somewhat routine but that this was beyond routine. He noted that the public deserves answers.

Mr. Spencer suggested that the options be reviewed at an upcoming meeting.

III. Community Development Payment System Update

Mr. Spencer stated that this presentation would be in response to the allegations made by the Auditor.

Mr. Acosta stated that this discussion should occur when the Auditor is present. Ms. Goodman-Hinnershitz and Ms. Reed agreed.

Mr. Kersley stated that he would be describing the process followed by the Six Sigma team so that background information is available.

Mr. Sterner stated that Council should have this background information.

Mr. Geffken stated that the Six Sigma process was beneficial. He stated that HUD has relayed to the City that the City is taking too long to process payments for several years. He stated that the staff reviewing the information addressed the issue clearly and thoughtfully and were supervised by Mr. Kersley.

Mr. Kersley stated that he was approached by Mr. Robinson to study this issue. He stated that he followed the typical Six Sigma process. He stated that the problem was that HUD payments were taking too long to be processed and that the team mapped and analyzed the process. He stated that the current system comes to a standstill when staff is out of the office. He stated that payments typically take 8 – 48 days. He described the approval process of accounts payable (AP) forms and that the AP forms generally do not contain any supporting documentation. He stated that the revised process takes only four days and established alternate signatures in the case of absences. He stated that this new process is modeled after the processes used in other cities and is approved by HUD. He stated that this process would also allow each CD program fund to have its own banking fund for better tracking. He stated that he did not seek advice from the solicitor.

Ms. Goodman-Hinnershitz stated that there is always redundancy in processes. She stated that the auditor should have been involved in the team discussions. Mr. Kersley stated that the auditor was approached three times about participating. He stated that he did meet with the auditor. He added that the Administration is addressing the processing of the AP forms city-wide.

Ms. Goodman-Hinnershitz noted that the process must be done legally to satisfy the auditor's concerns.

Mr. Sterner questioned the opinion of the solicitor.

Mr. Waltman noted that the issues discovered are not CD issues but are systemic issues. He noted his concern with financial controls without the signature and oversight of the auditor. He questioned if the Administration was opposed to the auditor signing checks. Mr. Geffken stated that he is not opposed.

Mr. Waltman expressed his belief that this new process has too little control and is too rapid a process and may become problematic. Mr. Geffken stated that the forms now contain supporting documentation for review.

Mr. Waltman stated that the auditor should have the ability to review all checks. Mr. Kersley stated that the new process has controls where they are actually needed.

Mr. Waltman stated that someone outside the department should review the documents. He also noted the need to have these documents recorded outside the Community Development Department for historic record.

Mr. Kersley stated that he is meeting with Mr. Cituk and the external auditor from Herbein on April 4.

Mr. Acosta questioned the opinion of the solicitor. Mr. Younger stated that the accusations were more form than substance. He opined that as Mr. Cituk was invited to participate and refused that he has no grounds. He stated that the Administrative Code states that the auditor will sign all checks.

Mr. Waltman suggested that Council review and approve changes to financial policies prior to their implementation. He stated that he is not prepared to remove the auditor from the process. Mr. Kersley agreed.

Mr. Spencer also suggested that Council review new financial processes. He noted his concern that without auditor oversight problems will not be discovered and reported. Mr. Geffken stated that the supporting documentation improves the process.

Mr. Spencer noted his agreement with Mr. Waltman. He also stated that all signatures should not be within the same department. Mr. Geffken stated that the signers are outside departments.

Mr. Spencer questioned what CD Admin funding has been spent on. He stated that he requested this information and continues to be given a lump sum and not a break-out. Mr. Geffken stated that he will provide this information.

Mr. Acosta requested that all of Council receive this information.

Ms. Reed questioned when the auditor was approached about the review process. Mr. Kersley stated that he shared the information with the auditor and he objected to the changes.

Ms. Reed questioned if the auditor had time to approach Council prior to the memo last week. Mr. Kersley expressed his belief that he did.

Mr. Waltman again expressed his belief that no check should be sent without the auditor's signature. Ms. Reed and Mr. Acosta agreed.

Mr. Waltman stated that Council sets financial controls. Mr. Younger opined that Council may have delegated this process to Finance.

Ms. Goodman-Hinnershitz noted her concern that changes made in the past resulted in problems which were not communicated to Council. Mr. Geffken expressed his belief that Council is crossing the line and moving into Administration.

Ms. Goodman-Hinnershitz stated that this deals with fiscal issues which are controlled by Council.

Mr. Waltman stated that Council is blamed for all actions of the City.

Mr. Spencer stated that the solicitor also needs to be involved in the meeting with the auditor on April 4.

Ms. Goodman-Hinnershitz noted that the City must be diligent about processes.

Mr. Spencer questioned if the auditor is again signing checks. Mr. Geffken stated that he is not agreeable to the new process but is signing checks to ensure that bills are paid timely.

Mr. Spencer questioned if an advisory opinion from the Charter Board was requested. Mr. Geffken stated that it was not.

Mr. Spencer requested that Ms. Kelleher draft a request for advisory opinion from the Charter Board. Ms. Kelleher stated that the letter is drafted and ready for Mr. Spencer's signature. Mr. Acosta and Ms. Goodman-Hinnershitz agreed with the need for an advisory opinion.

Mr. Geffken stated that the auditor will decide if he will sign checks after his meeting with Herbein on April 4. Mr. Waltman stated that this is not good enough.

Mr. Geffken stated that this is not the last step in the process. He stated that he intends to have the auditor sign checks but the auditor and the team must continue to monitor the process.

Ms. Reed questioned why the auditor was meeting with Herbein about this issue. Mr. Spencer explained that the outside auditor reviews the City's financial processes and controls.

Mr. Spencer suggested that this topic be discussed at the next Committee of the Whole meeting and that the auditor be in attendance.

IV. Bernhart Remediation

Ms. Hoag and Mr. Beane arrived at this time.

Mr. Spencer stated that Council is being asked to approve the access agreement and memorandum of understanding with Exide to begin the remediation of Bernhart Park.

Ms. Hoag stated that negotiations continued through the 11th hour via teleconference. She stated that the City, Exide and EPA/DEP conceptually agree on the cleanup. She stated that there are several items which Exide will remediate that they did not wish to appear in writing. She stated that she has been reviewing Exide's website and they have begun advertising bids for the contract awards. She stated that they have also submitted the necessary paperwork to the County Conservation District regarding the soil and sediment issues. She stated that she and Mr. Beane will be reading the agreements one more time very thoroughly before they are sent for signatures. She stated that the working committee will continue to monitor the issue and will make several site visits.

Mr. Marmarou questioned if there was a firm statement that Exide is responsible for the contamination. Ms. Kelleher stated that this is contained in the documents. Mr. Beane explained that Exide cannot get on site to begin remediation without the access agreement. He stated that Exide is agreeable to the extra items requested during negotiations that are contained in the MOU. The EPA has approved the work plan and the additional remediation items.

Mr. Marmarou stated that many people, especially children, continue to use this park. Ms. Hoag explained that the remediation plan will work to keep children on the paths in the steep slope areas.

Mr. Waltman questioned if warning signs would remain after the remediation is complete. Mr. Beane explained that the signs would be removed and the park reopened after remediation as the Park will then comply with EPA health standards.

Mr. Waltman questioned who would confirm that the site is remediated. Mr. Beane stated that EPA and DEP would monitor the clean-up.

Mr. Waltman questioned the lake area. Ms. Hoag stated that work will be set back from the lake area to prevent its contamination during clean-up. She stated that the lake is not currently contaminated.

Ms. Goodman-Hinnershitz requested an update on the dam situation. Ms. Hoag stated that DEP requested work on the dam be simultaneous with the remediation. She stated that this would result in competing interests. She explained that EPA has given a conditional approval of the work plan based on Council's approval of the access agreement.

Mr. Sterner questioned who would be responsible in the future if lead levels rise. Ms. Hoag stated that current air requirements are much stricter than they were in the past. She stated that current discharge is minor when compared to the past and air will be monitored closely during remediation.

Mr. Beane explained that superfund statutes state that if contamination returns in the future that EPA and DEP will return to the site and require additional work. Ms. Kelleher added that this is also true if safe levels are lowered by EPA.

Mr. Waltman questioned if other carcinogens are present in the park. Ms. Hoag stated that the City tried to monitor these items in the past but received no cooperation from EPA and DEP.

Mr. Waltman questioned if these other carcinogens are harmful and if the public should be aware of their presence. Ms. Hoag explained that remediation will include the removal of existing soil and replacement with new, clean soil. She stated she is not aware of any other harmful items.

Ms. Goodman-Hinnershitz questioned the timeline for completion. Ms. Hoag stated that it will depend on the issuance of necessary permits and when access is granted. She stated that contracts will also need to be executed. Mr. Beane stated that it is Exide's hope that the work is completed in mid – late summer of 2011.

Ms. Goodman-Hinnershitz reminded all that when remediation is complete that this park will need to be maintained by City staff. Ms. Hoag stated that mowing continued even when the park was closed. She stated that the removal of dead and dying trees will greatly assist the City.

Mr. Spencer voiced his thanks to the work group.

V. IAFF Arbitration

Mr. Geffken stated that the final meeting was held today. He stated that an agreement has been signed and that the majority of items contained in the Recovery Plan will be implemented. He explained that the agreement modifies the work schedule, changes the minimum manning level from 22 + 3 to 18 +3 to cover for employees who take time off, and requires that EMS to be considered fire fighters. He explained that EMS staff will be expected to assist with fires as most have already been cross-trained. He stated that the cost remains within that budgeted for 2011. The agreement contains a clause that it can be reopened in 2012 if overtime exceeds \$850,000. He stated that leave times have been reduced and the DROP and longevity items are eliminated as of 2012. The agreement is for a five year period with 0% increases through 2013, 2% in 2014, and 4% in 2015 and the IAFF will begin contributing towards the health care benefit. The agreement goes into affect April 1.

Mr. Acosta voiced his surprise that agreement has been reached this quickly.

Mr. Marmarou questioned if the agreement contained a residency clause. Mr. Geffken stated that it did not.

Mr. Marmarou questioned why that was not included. Mr. Geffken stated that negotiations focused on items in the Recovery Plan.

Mr. Sterner voiced his appreciation that overtime has been reduced. Mr. Geffken added that employees using sick leave must now submit doctor/hospital documentation.

VII. Agenda Review

Council reviewed this evening's agenda.

Ms. Goodman-Hinnershitz stated that Olivet needs formal Council action to move forward with their capital campaign. However, Olivet has not provided the additional information requested at the town meeting. She stated that the new building cannot look like the one at Oakbrook.

Mr. Denbowski added that binding legislation in the form of a lease agreement is needed by Olivet but that the City does not have enough information at this time.

Mr. Waltman questioned the location of the new building and its size. Ms. Goodman-Hinnershitz stated that the current fieldhouse will remain and the ball fields will remain under City control.

Mr. Waltman noted the need for more specific information.

Mr. Marmarou questioned where the building would be located. Mr. Spencer stated that it is unknown at this time, as is the size of the building and items within the park which may be lost to the building's footprint (basketball courts, field area, play areas, etc).

Mr. Waltman suggested placing the new building in the wading pool area. Mr. Spencer reminded Council that there are residences directly across the street from the wading pool area and they will be directly impacted by locating the building in that area.

Mr. Acosta stated that locating the building in that area will also cause additional parking problems.

Ms. Goodman-Hinnershitz stated that there is no master plan for this park. She stated that the easiest path for Olivet is to demolish the fieldhouse but that this is not supported by the neighbors. She stated that this park is a large parcel and some of this park area is unused. She stated that the summary of the town meeting is a draft and that she will be making additions/corrections.

Mr. Marmarou suggested that the City not move forward until additional information is received from Olivet.

Mr. Spencer questioned the term “expression of support” contained in the resolution and questioned if passing this resolution would commit the City to this project so that it must proceed. Mr. Denbowski stated that Olivet wishes to build a rec center at Pendora. He stated that Olivet will begin work on the plan and report back to the City. He stated that this support is needed to allow Olivet to begin their capital campaign. Mr. Younger expressed his belief that the resolution was vague enough that the project is not definite.

Mr. Spencer stated that if Council passes this resolution and Olivet spends the money on the planning process and the City rejects the project all are back in the same position as they currently are in. He stated his belief that this resolution should not commit the City to this project.

Mr. Waltman noted the need for the City to know the location of the new building quickly. Mr. Denbowski stated that Olivet has an architect and expects to know the location within 30 days.

Ms. Goodman-Hinnershitz reminded all that the center operated out of the Pendora fieldhouse is funded through CDBG whose funding will be reduced. Mr. Spencer requested that all consider that the Recreation Commission will be in place this year and will begin funding programming.

Ms. Goodman-Hinnershitz stated that it was suggested that Olivet investigate other locations. She stated that Central is too large and that Neversink does not have enough area. She stated that Olivet believes that locating at 10th & South would reduce the number of participants. She explained that the number of participants at Olivet determines their amount of funding.

Mr. Smith stated that he feels Council’s backs are against the wall on this issue as the timeline is tight. He stated his belief that if Council passes this resolution Olivet will view it as authorization for the project. He stated that there is not enough information to move forward at this time.

Mr. Spencer cautioned that the resolution may infer that the City is absolutely supporting the project. He stated that Olivet’s capital campaign must be site specific. He stated that if Council does not take action Olivet will need to wait to conduct the campaign or change the location.

Ms. Goodman-Hinnershitz stated that the City has backed out of projects by Olivet in the past. She stated that they want a good faith commitment and a green light to begin the capital campaign.

Mr. Waltman questioned other concerns beside the building location. Mr. Smith stated that the residents will need to continue to have full, unrestricted access to the entire park.

Ms. Goodman-Hinnershitz stated that Olivet is willing to be flexible. She stated that she has heard from neighbors who support the project and others who do not. She stated that this would decrease the green space at Pendora Park.

Mr. Spencer questioned if Council support is given and the City pulls the project how that would effect the Olivet capital campaign.

Mr. Waltman voiced his support of the project. He noted the need for the building's proposed location to be disclosed quickly and stated that the Planning Commission must be involved in the project.

Ernie Schlegel stated that he attended the town meeting on this subject. He stated that Mr. Palmer answered all questions. He noted his understanding that the new building would be located at 19th & Forest Sts. He noted that recreation opportunities are needed in this area and encouraged Council to move forward with the resolution.

Mr. Acosta noted his agreement with Mr. Spencer regarding the City's future option to determine that the project will not move forward.

Mr. Spencer stated that the resolution will be added to this evening's agenda.

Mr. McMahon arrived at this time.

The meeting adjourned at 7:00 pm.

Respectfully Submitted
Linda A. Kelleher, CMC
City Clerk